HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)
(Chapter VIII Rule 32 (2)(b)

Description of the case.

AO No. 237 to 241 of 2002
India Assurance Company

VS

Kuldeep Singh and others

Approved for reporting.
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Not approved for reporting

Date of decision 15.10.2004

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL

A.O. No. 237 of 2002

The New India Assurance Company ..... Appellant

Versus

Kuldeep Singh & others ..... Respondents

A.O. No. 238 of 2002

The New India Assurance Company ..... Appellant

Versus

Vijendra Singh & others ..... Respondents

A.O. No. 239 of 2002

The New India Assurance Company ..... Appellant

Versus

Kalvinder Singh & others ..... Respondents

A.O. No. 240 of 2002

The New India Assurance Company ..... Appellant

Versus

Smt. Manjeet Kaur & others ..... Respondents

A.O. No. 241 of 2002

The New India Assurance Company ..... Appellant

Versus

Sher Singh & others ..... Respondents

Dated: October 15, 2004

Hon. Rajesh Tandon J.

Heard the learned counsel for the parties.

Present appeals have been filed against the judgment and award dated 23.7.2002 passed by the Motor Accident Claims Tribunal, Kashipur, District Udham Singh Nagar.

Briefly stated the facts giving rise to the present appeal are that the respondent have filed separate claims petitions before the Motor Accident Claims Tribunal, Kashipur, District Udham Singh Nagar for the grant of compensation on account of injuries sustained by the claimants in a motor vehicle accident on 20.12.2000 at 6.00 PM near Bajpur Doraha, Tehsil Kashipur, involving truck No. UP 21G/9005. In that accident

Smt. Sarjeet Kaur succumbed to the injuries and her legal heirs Sher Singh and another has been filed the claim petition.

The petitioners have alleged that they were coming from Sitarganj by Jeep No. UHC 7273 and were going to their village Birpur. As soon as their jeep reached near Bajpur Doraha, truck No. U.P. 21-G/9005 who was coming behind the jeep dashed the jeep due to which the jeep rolled into the gorge and the claimant have sustained grievous injuries in the accident. Later on one injured Smt. Sarjeet Kaur died in the hospital. The petitioners have alleged that the accident had taken place due to rash and negligent driving by the truck driver.

The Claim petitions have been contested by the opposite parties and filed their written statements.

On the pleadings of the parties as many as three issues were framed by the Clams Tribunal.

The claims tribunal on the basis of ocular testimony of eyewitness has held that the accident took place due to rash and negligent driving of the truck in question. The claims Tribunal has awarded a sum of Rs17,000/- to Vijendra Singh, Rs.20,000/- to Kalvinder Singh, Rs.26,000/- to Kuldeep Singh, Rs.50,000/- to Smt. Manjeet Kaur and Rs.87,000/- to Sri Sher Singh and Balvinder Singh legal heirs of deceased Smt. Sarjeet Kaur. Feeling aggrieved against the order the insurance company has preferred the present appeals.

All the claimants including deceased Smt. Sarjeet Kaur were coming from Sitarganj to their village Birpur by a jeep. All the claimants examined themselves in their respective claim petitions and have categorically stated that the accident took place due to rash and negligent driving by the driver of truck No. UP 21-G/9005, who strike the jeep from behind due to

which the jeep collided with a tree and then fell down into a gorge. The petitioners also examined one Sri Harpal Singh who is an independent witness. He has stated that on 20.1 2.2000 at about 6.00 PM he was going to his village by his motorcycle. Truck No. UP 21.G/9005 was being driven rashly and negligently who strike the jeep which was going ahead to it and due to heavy impact of truck the jeep collided with a tree and then fell down into the gorge.

As against this the opposite parties have examined D.W. 2 Birsa Singh who is the co-owner of the truck. He has stated that on 21.12.2000 the truck was being driven by its driver Salvinder Singh and was going from Belakhera to Jaspur. As soon as the truck reached near Tuti-pulia ahead Bajpur Doraha in order to save the cows the truck collided with the jeep. Thus he admitted the accident and involvement of his truck in the accident. He stated that the truck driver has valid driving licence and the truck was insured with the New India Assurance Company. On behalf of insurance company Sri Chandrapal Singh Tomar, Investigator has been examined as D.W.1. This witness was not present at the place of accident. This witness has tried to prove that the truck in question was not involved in the accident and the jeep itself met to accident due to the fault of jeep driver. Such story appears to have been concocted by the insurance company in order to avoid its liability to pay compensation to the claimants and the learned Claims Tribunal was justified by neglecting the testimony of D.W.1 Chandrapal Singh Tomar.

The claims Tribunal on the basis of ocular testimony of witnesses of the accident has given categorical findings that the accident took place due to rash and negligent driving of the truck driver. P.W.2 Birsa Singh who is the co-owner of the

truck has stated that the accident took place due to unavoidable circumstances as the driver tried to save some cows who have come on the road. The driver of the truck was the best witness to depose the cause of accident but surprisingly enough he has not been examined by the opposite parties. By not examining the driver of the truck the inference has to be taken that the accident took place due to rash and negligent driving.

The Apex Court in the case Syad Akbar Vs. State of Karnataka, AIR 1979 SC 1884 has held as under:

"It is to such cases that the maxim res ipsa liquitur may apply, if the cause of the accident is unknown and no reasonable explanation as to the cause is coming forth from the defendant. To emphasise the point, it may be reiterated that in such cases, the event or accident must be of a kind which does not happen in the ordinary course of things if those who have the management and control use due care. But , according to some decisions, satisfaction of this condition alone is not sufficient for res ipsa to come into play and it has to be further satisfied that the event which caused the accident was within the defendant's control. The reason for the second requirement is that where the defendant has control of the thing, which caused the injury, he is in better position than the plaintiff to explain how the accident occurred. * * * * * *

Thus for the application of the maxim res ipsa loquitur no less important a requirement is that the res must not only bespeak negligence, but pin it on the defendant."

The appellant has raised the plea that the driver of the truck has no valid driving licence at that time of accident. The trial Court has framed issue on this point. The owner of the

truck Sri Birsa Singh has stated on oath that the truck was being driven by Sri Salvinder Singh at the time of accident and he had valid driving licence. The driving licence has been filed as paper no. 14-C/3 in the record. The appellant has not adduced any evidence to prove adverse to it and as such the trial Court has rightly decided this issue against the opposite party appellant.

The appellant insurance company has admitted that the truck in question was comprehensively insured with it at the time of accident and thus the appellant insurance company is liable to pay compensation to the claimants.

So far as the amount of compensation is concerned the claims Tribunal has awarded compensation in all the cases considering the evidence adduced by the parties and the counsel for the appellant has failed to show that the amount of compensation awarded to the petitioners by the Claims Tribunal is excessive or unjustified. In fact, this plea is not open for the insurance company in the appeal, as has been held by the Apex Court in AIR 2002 SC 3350, National Insurance co. Ltd. vs. Nicolletta Rohtagi and others. The Apex Court has held as under:

25. *We have earlier noticed that motor vehicle accident claim is a tortuous claim directed against tortfeasors who are the insured and the driver of the vehicle and the insurer comes to the scene as a result of statutory liability created under the Motor Vehicles Act. The legislature has ensured by enacting Section 149 of the Act that the victims of motor vehicle are fully compensated and protected. It is for that reason the insurer cannot escape from its liability to pay compensation on any exclusionary clause in the insurance policy except those*

specified in Section 149(2) of the Act or where the condition precedent specified in Section 170 is satisfied.

31. *We have already held that unless the conditions precedent specified in Section 170 of the 1988 Act are satisfied, an insurance company has no right of appeal to challenge the award on merits. However, in a situation where there is a collusion between the claimants and the insured or the insured does not contest the claim and, further, the Tribunal does not implead the insurance company to contest the claim, in such cases it is open to an insurer to seek permission of the Tribunal to contest the claim on the ground available to the insured or to a person against whom a claim has been made. If permission is granted and the insurer is allowed to contest the claim on merits, in that case it is open to the insurer to file an appeal against an award on merits, if aggrieved. In any case where an application for permission is erroneously rejected the insurer can challenge only that part of the order while filing appeal on grounds specified in sub-section (2) of Section 149 of the 1988 Act. But such application for permission has to be bona fide and filed at the stage when the insured is required to lead his evidence. So far as obtaining compensation by fraud by the vitiates the entire proceeding and in such cases it is open to an insurer to apply to the Tribunal for rectification of award.*

32. For the aforesaid reasons, our answer to the question is that even if no appeal is preferred under Section 173 of the 1988 Act by an insured against the award of a Tribunal, it is

not permissible for an insurer to file an appeal questioning the quantum of compensation as well as findings as regards negligence or contributory negligence of the offending vehicle.

Insurance laws are the social laws for providing shelter to the family of the deceased person. The litigation remain pending for so many years. The Apex Court, therefore, has resolved the controversy, that the insurance company has no right to challenge the quantum of compensation unless permission has been sought on the specified grounds.

The time has come when the insurance companies should come forward for the help of the families who had been the victim of the accidents. The failure of the insurance company results in miscarriage of justice. The insurance company should stand as caretaker of the insured and should not contest the case for defending the purpose for which they exist.

I am just quoting the words from the mouth of Lord Krishna to the following effect:

यस्मान्नोद्विजते लोको लोकान्नोजिते च यः ।
हर्षामर्षभमयोद्वेगैर्मुक्त्यो यः स च मे प्रियः ।।

He who is not a source of annoyance to his fellow creatures, and who is his turn does not feel vexed with his fellow-creatures, and who is free from delight and envy, perturbation and fear, is dear to Me.

Further more, no appeal has been preferred by the insured i.e. the owner of the truck, and thus in view of the findings of the Apex Court in the case National Insurance Co. Ltd. vs. Nicolletta Rohtagi (supra), the insurance company has no right to challenge the findings of the Claims Tribunal regarding quantum of amount of compensation.

In view of the aforesaid fact, the appeals have no force and are hereby dismissed. No order as to costs.

(Rajesh Tandon J.)

15 .10.2004
*Dhyani